

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

NW MONITORING LLC, a Delaware limited liability company,

Plaintiff,

V.

SUSAN L. HOLLANDER, et al.,

Defendants.

CASE NO. 3:20-cv-05572-DGE

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. CONFIDENTIAL and CONFIDENTIAL - OUTSIDE COUNSEL ONLY MATERIAL
2 (“Protected Material”)

3 2.1 “Confidential” material shall include the following documents and tangible things
4 produced or otherwise exchanged: confidential or commercially sensitive technical, sales,
5 marketing, personal, or financial information of the producing party (including any party to this
6 action and any non-party producing information or material voluntarily or pursuant to a subpoena
7 or a court order in connection with this action), or information that the producing party is under a
8 legal obligation to maintain as confidential.

9 2.2 “Confidential - Outside Counsel Only” material shall include the following
10 documents and tangible things produced or otherwise exchanged: (i) marketing, financial, sales,
11 research and development, or technical, data or information; (ii) commercially sensitive
12 competitive information, including, without limitation, information obtained from a non-party
13 pursuant to a current Nondisclosure Agreement (“NDA”); (iii) information or data relating to
14 future products or services not yet commercially released and/or strategic plans; (iv) trade secret,
15 or other confidential research and development information; and, (v) commercial agreements,
16 settlement agreements or settlement communications, the disclosure of which is likely to cause
17 harm to the competitive position of the producing party.

18 3. SCOPE

19 The protections conferred by this agreement cover not only Protected Material (as defined
20 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
21 excerpts, summaries, or compilations of Protective Material; and (3) any testimony, conversations,
22 or presentations by parties or their counsel that might reveal Protective Material.

23 However, the protections conferred by this agreement do not cover information that is in
24 the public domain or becomes part of the public domain through trial or otherwise.

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1 4. ACCESS TO AND USE OF PROTECTED MATERIAL

2 4.1 Basic Principles. A receiving party may use Protected Material that is disclosed or
3 produced by another party or by a non-party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Protected Material may be disclosed only to the
5 categories of persons and under the conditions described in this agreement. Protected Material
6 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
7 that access is limited to the persons authorized under this agreement.

8 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
9 by the court or permitted in writing by the designating party, a receiving party may disclose any
10 confidential material only to:

11 (a) the receiving party’s counsel of record in this action, as well as employees
12 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

13 (b) the officers, directors, and employees (including in house counsel) of the
14 receiving party to whom disclosure is reasonably necessary for this litigation;

15 (c) experts and consultants to whom disclosure is reasonably necessary for this
16 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (d) the court, court personnel, and court reporters and their staff;

18 (e) copy or imaging services retained by counsel to assist in the duplication of
19 confidential material, provided that counsel for the party retaining the copy or imaging service
20 instructs the service not to disclose any confidential material to third parties and to immediately
21 return all originals and copies of any confidential material;

22 (f) during their depositions, witnesses in the action to whom disclosure is
23 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
24 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
25 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
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1 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
2 under this agreement;

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information; and

5 (h) independent contractors engaged by counsel of record for the parties, to the
6 extent reasonably necessary to assist such counsel in connection with this litigation, including but
7 not limited to (i) legal translators retained to translate in connection with this action; (ii)
8 independent stenographic reporters and videographers retained to record and transcribe testimony
9 in connection with this action; (iii) graphics or design services retained by counsel for purposes of
10 preparing demonstrative or other exhibits for deposition, trial, or other court proceedings in the
11 action; (iv) non-technical jury or trial consulting services not including mock jurors; (v) electronic
12 discovery vendors retained to assist with the organization and management of electronic discovery;
13 and (vi) private investigators, provided that such persons or entities have first been given a copy
14 of this Protective Order and have executed the "Acknowledgment and Agreement to Be Bound"
15 (Exhibit A).

16 4.3 Disclosure of "CONFIDENTIAL - OUTSIDE COUNSEL ONLY" Information or
17 Items. Protected Material designated CONFIDENTIAL – OUTSIDE COUNSEL ONLY and the
18 contents therein shall be available only to the persons or entities listed in paragraphs 4.2(a), (c),
19 (d), (e), (g) and (h), subject to any terms set forth or incorporated therein, and not to any person or
20 entity listed in paragraph 4.2(b) and 4.2(f).

21 4.4 Filing Confidential Material. Before filing Protected Material or discussing or
22 referencing such material in court filings, the filing party shall confer with the designating party,
23 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
24 remove the confidential designation, whether the document can be redacted, or whether a motion
25 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
26 designating party must identify the basis for sealing the specific confidential information at issue,

1 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
2 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
3 the standards that will be applied when a party seeks permission from the court to file material
4 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
5 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
6 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
7 the strong presumption of public access to the Court's files.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
10 or non-party that designates information or items for protection under this agreement must take
11 care to limit any such designation to specific material that qualifies under the appropriate
12 standards. The designating party must designate for protection only those parts of material,
13 documents, items, or oral or written communications that qualify, so that other portions of the
14 material, documents, items, or communications for which protection is not warranted are not swept
15 unjustifiably within the ambit of this agreement.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
17 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
18 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
19 and burdens on other parties) expose the designating party to sanctions.

20 If it comes to a designating party's attention that information or items that it designated for
21 protection do not qualify for protection, the designating party must promptly notify all other parties
22 that it is withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in this
24 agreement (see, e.g., second paragraph of section 5.2(b) below), or as otherwise stipulated or
25 ordered, disclosure or discovery material that qualifies for protection under this agreement must
26 be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (e.g., paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word “CONFIDENTIAL” or “CONFIDENTIAL – OUTSIDE COUNSEL ONLY” to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL” or “CONFIDENTIAL – OUTSIDE COUNSEL ONLY.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
2 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
3 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
4 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
5 challenge a confidentiality designation by electing not to mount a challenge promptly after the
6 original designation is disclosed.

7 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
8 regarding confidential designations without court involvement. Any motion regarding confidential
9 designations or for a protective order must include a certification, in the motion or in a declaration
10 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
11 affected parties in an effort to resolve the dispute without court action. The certification must list
12 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
13 to-face meeting or a telephone conference.

14 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
15 intervention, the designating party may file and serve a motion to retain confidentiality under Local
16 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
17 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
18 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
19 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
20 the material in question as confidential until the court rules on the challenge.

21 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
22 LITIGATION

23 If a party is served with a subpoena or a court order issued in other litigation that compels
24 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
25 "CONFIDENTIAL – OUTSIDE COUNSEL ONLY" that party must:

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(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

If a producing party does not take steps to prevent disclosure of the requested documents within ten (10) business days of the date written notice is given, the party to whom the referenced subpoena is directed may produce such documents in response thereto, but shall take all reasonable measures to have such documents treated in accordance with terms of this Protective Order.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

The parties acknowledge that regardless of the producing party's diligence an inadvertent production of attorney-client privileged or attorney work product materials may occur. Inadvertent or unintentional production of any document or thing subject to attorney-client privilege or work-product immunity shall not constitute a waiver of the attorney-client privilege or work-product

1 immunity, if any, as they apply to those documents specifically or to the subject matter of those
2 documents generally, either in this Action or in any subsequent action or other proceeding.
3 The parties agree that if a party through inadvertence produces or provides discovery that it
4 believes is subject to a claim of attorney-client privilege or attorney work product, the producing
5 party may give written notice to the receiving party that the document or thing is subject to a claim
6 of attorney-client privilege or attorney work product protection and request that the document or
7 thing be returned to the producing party. Upon receipt of such written request, the receiving party
8 must not use or disclose such documents or things or the information contained in them, and the
9 receiving party shall promptly gather the original and all copies of such documents and things,
10 take reasonable steps to retrieve the documents and/or information if the receiving party disclosed
11 it before receiving the request, and shall promptly return (if a true original) or destroy the document
12 and all such copies to the designating party.

13 Return of the document or thing shall not constitute an admission or concession, or permit
14 any inference, that the returned document or thing is, in fact, properly subject to a claim of
15 attorney-client privilege or attorney work product protection. The receiving party may challenge
16 the privileged nature of the recalled documents by filing a motion with the Court and requesting
17 an in camera review of the documents or things in question, but under no circumstances may the
18 receiving party use the document or its contents in challenging an assertion of privilege or work
19 product protection, and under no circumstances may the receiving party assert as a ground for
20 compelling production the fact or circumstance that the material has already been produced or
21 disclosed. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set
22 forth herein.

23 10. NON-PARTY USE OF THIS PROTECTIVE ORDER

24 10.1 Purpose. A non-party producing discovery material voluntarily or pursuant to a
25 subpoena or a court order may designate such discovery material as Protected Material pursuant
26 to the terms of this Protective Order.

1 10.2 Non-Party Access. A non-party's use of this Protective Order to protect its
2 Protected Material does not entitle that non-party access to the Protected Material produced by any
3 party or non-party in this case.

4 11. NON TERMINATION AND RETURN OF DOCUMENTS

5 Within 60 days after the termination of this action, including all appeals, each receiving
6 party must return all Protected Material to the producing party, including all copies, extracts and
7 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

8 Notwithstanding this provision, counsel are entitled to retain two (2) archival copy of all
9 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
10 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
11 product, even if such materials contain confidential material.

12 The confidentiality obligations imposed by this agreement shall remain in effect until a
13 designating party agrees otherwise in writing or a court orders otherwise.

14 12. PRODUCING PARTY'S DOCUMENTS

15 Nothing in this Protective Order shall limit any producing party's use or disclosure of its
16 own Protected Material.

17
18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19
20 DATED November 21, 2022.

YOUNGLOVE & COKER, P.L.L.C.

21 Gregory M. Rhodes
22 GREGORY M. RHODES, WSBA #33897
23 Attorney for Defendant Wolfe

24
25 DATED November 21, 2022.

PERKINS COIE, LLP

26 Christian W. Marcelo
27 CHRISTIAN W. MARCELO, WSBA #51193
28 DAVID A. PEREZ, WSBA #43959
29 Attorneys for Defendants Parkinson and 4319
30 Consulting, Inc.

1
2 DATED November 21, 2022.

BEAN LAW GROUP

3 Matthew J. Bean

4 MATTHEW J. BEAN, WSBA #23221
5 Attorneys for Defendants Hollander, M.D.

6 DATED November 21, 2022.

KITSAP LAW GROUP

7 David P. Horton

8 DAVID P. HORTON, WSBA #27123
9 Attorney for Plaintiff NW Monitoring LLC

10 PURSUANT TO STIPULATION, IT IS SO ORDERED

11 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
12 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
13 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
14 documents, including the attorney-client privilege, attorney work-product protection, or any other
privilege or protection recognized by law.

15 DATED this 2nd day of December, 2022.

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21 David G. Estudillo
22 United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in the
7 case of *NW Monitoring LLC v. Susan L. Hollander, et al.* No. 3:20-cv-05572-DGE. I agree to
8 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
9 and acknowledge that failure to so comply could expose me to sanctions and punishment in the
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict
12 compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 | City and State where sworn and signed:

18 Printed name:

19 || Signature: